Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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DEC 22 1998

In re: Request for ruling on behalf of

Company T =
Company K =
Plan 1 =

Plan 2 =

This letter is in response to your request, dated June 2, 1998, for rulings on behalf of Company T that Plan 2 is a qualified replacement plan as described in section 4980(d)(2) of the Internal Revenue Code (Code), that the amount transferred from Plan 1 to Plan 2 is not subject to an excise tax under section 4980, and that the rate of excise tax imposed under section 4980 on the remaining reversion to Company T is 20 percent.

Facts

According to the facts as stated, Company T is primarily engaged in the and related businesses. In April 1997, Company T merged with Company K, the sponsor of Plan 1 named above, with Company T becoming the sponsor of Plan 1 as the surviving corporation. Plan 1 is a defined benefit plan that received its most recent determination letter on January 26, 1995. Company T also maintains Plan 2 which received its most recent favorable determination letter on November 15, 1996. Plan 2 has been amended and restated and renamed as of January 1, 1998, and Company T intends to submit the restated Plan 2 for a new determination letter. Company T's authorized representative has stated that both Plan 1 and Plan 2 are qualified under section 401(a) at the time of this submission, with the cash or deferred arrangement of Plan 2 qualified under section 401(k)(2).

Benefits under Plan 1 were frozen, effective August 15, 1997. Company T intends to terminate Plan 1 and expects approximately $5 million in assets to remain in Plan 1's trust fund after all liabilities have been satisfied as required under section 401(a)(2) of the Code. Company T proposes to transfer between 25 percent and 100 percent of the excess Plan 1 assets directly to Plan 2. Such amount so transferred will be allocated to participants' accounts in the year in which the transfer occurs. Any assets not transferred to Plan 2 will revert to Company T. At least 95 percent of the active participants in Plan 1, employed by Company T after the termination of Plan 1, will be eligible to participate in Plan 2. The Company's authorized representative has stated in a letter dated December 9, 1998, that employees of Company T, who are eligible to participate under sections 3.1(a) or (b) of Plan 2 and do not choose to make elective deferrals under Plan 2, still become participants of Plan 2 for all other purposes, including service crediting, despite the fact that no matching or discretionary contributions accrue to the participants in those years.

Section 10.4.1 of Plan 1 provides that upon termination of the Plan in accordance with section 10.3, or partial termination of the Plan by operation of law, the Accrued Benefit of each affected Participant as of the date of termination or partial termination shall become nonforfeitable, to the extent then funded, and shall not thereafter be subject to forfeiture. The benefit to be distributed to each Participant will be provided pursuant to section 10.4.2. If after such distribution, any amounts remain in the Trust Fund after payment of expenses, such amounts may revert to the Company.

Ruling Requested

Based on the facts as stated, the following rulings have been requested.

1. Assuming that Plan 2 is at all relevant times a qualified plan under Code section 401(a), Plan 2 will constitute a "qualified replacement plan" within the meaning of Code section 4980(d)(2), established in connection with the termination of Plan 1.

2. Company T will not be subject to an excise tax under Code section 4980 with respect to the amount transferred from Plan 1 to Plan 2.

3. The rate of excise tax imposed on Company T with respect to any employer reversion subject to section 4980 of the Code from Plan 1 will be 20 percent.

Applicable Law

Section 4980 of the Internal Revenue Code provides rules for the tax applicable on the reversion of qualified plan assets to an employer. Section 4980(a) provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(b) provides that the tax under section 4980(a) is to be paid by the employer maintaining the plan. Section 4980(d) provides, in general, that section 4980(a) is applied by substituting "50 percent" for "20 percent" with respect to any employer reversion from a qualified plan unless (A) the

employer establishes or maintains a qualified replacement plan, or (B) the plan provides benefit increases meeting the requirements of section 4980(d)(3). Section 4980(d)(3) provides that the requirements of that paragraph are met if a plan amendment to the terminated plan is adopted in connection with the termination of the plan which provides pro rata increases in the accrued benefits of all qualified participants which (i) have an aggregate present value not less than 20 percent of the maximum amount which the employer could receive as an employer reversion without regard to that subsection, and (ii) take effect immediately on the termination date.

Section 4980(d)(2) provides that, for purposes of that subsection, the term "qualified replacement plan" is a qualified plan established or maintained by the employer in connection with a qualified plan termination with respect to which the participation, asset transfer, and allocation requirements of sections 4980(d)(2)(A), (B), and (C) are met.

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination are active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an amount equal to the excess (if any) of 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d), over the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date. Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under section 4980(d)(2)(B)(i), such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of section 4980.

Section 4980(d)(2)(C)(i) provides that, in general, in the case of any defined contribution plan, the portion of the amount transferred to the replacement plan be allocated under the plan to (I) the accounts of participants in the plan year in which the transfer occurs, or (II) be credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer. Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under section 415, any amount credited to a suspense account under section 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the 7-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any such limitation, it shall be allocated to the participant as provided in section 415.

Rationale

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a termination, which satisfies the requirements of

sections 4980(d)(2)(A), (B), and (C). Section 4980(d)(2)(A), requires that at least 95 of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan. All active participants of Plan 1 who remain employees of Company T are eligible to participate in Plan 2. Therefore, because Plan 2 will cover 100 percent of the participants of Plan 1 who remain employees of the employer, the requirements of section 4980(d)(2)(A) are met. Section 4980(d)(2)(B) requires a direct transfer from the terminated plan to the replacement plan, before any employer reversion, in an amount equal to the excess, if any, of 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to such subsection, over the amount used to increase benefits described in section 4980(d)(2)(B)(ii). Company T's authorized representative has stated that benefits under Plan 1 will not be increased on termination as described in section 4980(d)(2)(B)(ii). Because Company T will transfer 25 percent of Plan 1's remaining assets after all benefit liabilities under section 401(a)(2) of the Code have been satisfied to Plan 2, the requirements of section 4980(d)(2)(B) are met. Section 4980(d)(2)(C) requires, generally, that in the case of any defined contribution plan, the portion of the amount transferred to the replacement plan be allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or credited to a suspense account and allocated to accounts of participants no less rapidly than ratably over the 7-plan-year period beginning with the year of the transfer. Amounts transferred from Plan 1 to Plan 2 will be allocated to the accounts of participants in the plan year in which the transfer occurs, which satisfies the requirements of section 4980(d)(2)(C). Therefore, Plan 2 is a qualified replacement plan within the meaning of Code section 4980(d)(2).

Section 4980(c)(2) provides, generally, that "employer reversion" means the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from a qualified plan. Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of the amount described in section 4980(d)(2)(B)(i) to a qualified replacement plan, such amount is not includible in the gross income of the employer, nor is a deduction allowed with respect to such transfer, and such transfer is not treated as an employer reversion for purposes of section 4980. Because Company T will directly transfer 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d)(2)(B) from Plan 1 to a qualified replacement plan, such transfer will not be includible in Company T's gross income, nor be deductible, and is not treated as an employer reversion for purposes of section 4980. Therefore, such amount will not be subject to the tax imposed under section 4980(a).

Section 4980(a) provides for the imposition of a tax of 20 percent of the amount of any employer reversion from a qualified plan. Section 4980(d)(1) provides that "50 percent" is substituted for "20 percent" in section 4980(a) with respect to any employer reversion from a qualified plan unless the employer establishes or maintains a qualified replacement plan, or the plan provides benefit increases meeting the requirements of section 4980(d)(3). Because Company T maintains a qualified replacement plan, the rate of tax imposed upon any amounts treated as an employer reversion from Plan 1 will be 20 percent.

Holdings

1. Assuming that Plan 2 is at all relevant times a qualified plan under section 401, Plan 2 constitutes a "qualified replacement plan" within the meaning of section 4980(d)(2) of the Code.

2. Company T will not be subject to an excise tax under Code section 4980 with respect to the transfer from Plan 1 to Plan 2 of 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to section 4980(d)(2)(B).

3. The rate of excise tax imposed on Company T with respect to any employer reversion subject to section 4980 of the Code from Plan 1 will be 20 percent.

Sincerely yours,

Kathryn Marticello

Kathryn Marticello
Chief, Actuarial Branch 2